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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

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KELATRON,

Plaintiff,

v.

MARLYN NUTRACEUTICALS,

Defendant.

MEMORANDUM DECISION

Case No. 1:12-cv-00124-DB-DBP

District Judge Dee Benson

Magistrate Judge Dustin B. Pead

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**I. INTRODUCTION**

This matter was referred to the Court under 28 U.S.C. § 636(b)(1)(A). (Docket Nos. 26; 45; 49.) The Court now considers Plaintiff's motion to amend the scheduling order deadline for amending pleadings so that it may amend its answer to Defendant's counterclaims. (Dkt. No. 45.) The Court also considers the parties' partially stipulated motion to amend the scheduling order in its entirety. (Dkt. No. 49.) For the reasons discussed below, the Court **GRANTS** both motions.<sup>1</sup>

**II. ANALYSIS OF MOTIONS**

Under the parties' current scheduling order, January 23, 2013 was the deadline for Plaintiff to file motions to amend pleadings and to add parties. (Dkt. No. 37 at 3.) On November 11,

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<sup>1</sup> In the interest of time, the Court concludes that Plaintiff's reply to the parties' partially stipulated motion (Dkt. No. 49) is unnecessary.

2013, Plaintiff moved to amend the deadline for amending pleadings. (Dkt. No. 45.) Plaintiff seeks to extend this deadline specifically so that it may file an amended answer that sets forth four new affirmative defenses to Defendant's counterclaims. (*Id.* at 1.) Defendant has not filed a response to plaintiff's motion, and the time to do so has expired. *See* DUCivR 7-1(b)(3)(B) (stating a party must oppose a motion within fourteen days after being served with the motion); *id.* 7-1(d) ("Failure to respond timely to a motion may result in the court's granting the motion without further notice.").

On December 5, 2013, the parties filed a stipulated motion to amend their current scheduling order in its entirety. (Dkt. No. 49.) The parties seek to extend remaining deadlines by approximately forty-two (42) days because their previous disputes have delayed discovery. (*Id.* at 1-2.) Pertinent here, the stipulated motion seeks to extend the January 23, 2013 deadline for amending pleadings and adding parties to December 20, 2013. (Dkt. No. 49-1 at 3.)

On December 6, 2013, Defendant filed an opposition to the parties' stipulated motion insofar as the motion seeks to extend the deadline for amending pleadings and adding parties. (Dkt. No. 51.)<sup>2</sup> Defendant asserts it never agreed to extend this deadline and claims that it "did not notice" the December 20, 2013 deadline listed in the stipulated motion. (*Id.* at 2.) Defendant now declares it "will strenuously object to any [] attempt" to amend this deadline. (*Id.*)

Even crediting Defendant's failure to notice the contested deadline in the stipulated motion, Defendant fails to offer any persuasive reasons for why it now opposes extending the deadline. Despite its strenuous objection to amending this deadline, Defendant does not explain why it neglected to oppose Plaintiff's earlier motion to amend the pleadings deadline (Dkt. No. 45).

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<sup>2</sup> Defendant stipulates to the remainder of the motion. (Dkt. No. 51 at 2.)

Under such circumstances, the Court believes granting both Plaintiff's earlier motion and the parties' partially stipulated motion is warranted.

### **III. ORDERS**

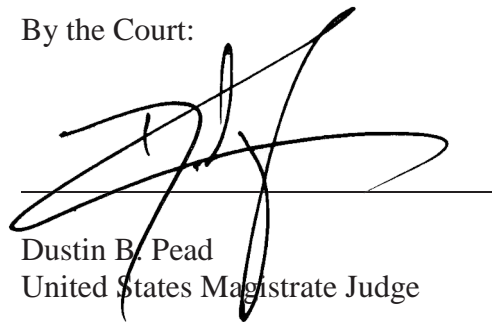
For the reasons set forth above, the Court:

**GRANTS** Plaintiff's motion to amend the scheduling order deadline for amending pleadings so that it may amend its answer to Defendant's counterclaims. (Dkt. No. 45.)

**GRANTS** the parties' partially stipulated motion to amend the scheduling order in its entirety. (Dkt. No. 49.)<sup>3</sup>

Dated this 11<sup>th</sup> day of December, 2013.

By the Court:



Dustin B. Pead  
United States Magistrate Judge

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<sup>3</sup> The Court will issue the scheduling order concurrently with this memorandum decision.